Lawsuit & Abuse & Ohio

American Tort Reform Association

ATRA

Lawsuit Abuse & Ohio

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Michael Hotra & Emily Asel

Introduction

■ ■ ■ Senator George V. Voinovich

This study shows that Ohio is in a state of crisis. People are losing their jobs and watching their pensions and IRAs evaporate before their very eyes. Retirees must stand by helplessly as their life savings dwindle, waiting for the moment when they have to re-enter the work force to make ends meet. Ohio communities are losing businesses, which, until now, have been part of the backbone of their economic well being. Healthcare costs are rising to the extent that many in Ohio can no longer afford health insurance. And Ohio physicians are reluctantly closing their practices, leaving some Ohio communities stranded without healthcare providers.

This study shows that the crisis can be traced to a litigation epidemic which is sweeping across this country. For the system to work, we must strike a delicate balance between the rights of aggrieved parties to bring lawsuits and the rights of society to be protected against frivolous lawsuits and outrageous judgments that are disproportionate to compensating the injured and made at the expense of society as a whole.

The civil justice system is broken. It allows Ohio businesses to go bankrupt as a result of runaway asbestos litigation that doesn't distinguish between truly sick persons and healthy plaintiffs who file meaningless lawsuits just for the money. The current system allows Ohioans to be plaintiffs in class action lawsuits they know nothing about and that take place in states they have never even visited. It allows lawsuits and verdicts that have escalated the cost of healthcare so much that many Ohioans can no longer afford health insurance.

This did not have to happen.

In 1996, as Governor of Ohio, I was proud to sign H.B. 350, strong tort reform legislation that became law in Ohio—for awhile. It might have helped today's liability crisis, but it never got a chance. In 1999, the Supreme Court of Ohio, in a bizarre decision, struck down Ohio's civil justice reform law, even though the lead plaintiff in the case was the Ohio Academy of Trial Lawyers. Their reason for challenging the law? They claimed their association would lose members and lose money as a result of the reforms.

While we were frustrated at the state level, I'm proud to have continued my fight for a fair, robust civil justice system in the United States Senate, where I have cosponsored strong medical liability reform legislation to help keep Ohio doctors in Ohio; class action reform to end practices that award consumers with worthless coupons and their lawyers with millions of dollars in legal fees; and small business liability protections so business owners do not have to close up shop simply because they get sued.

I strongly believe that in working toward a solution to the litigation crisis we should also work to protect the rights of the truly injured. I am pleased to be working with the American Tort Reform Association and the Ohio Alliance for Civil Justice to help clean up the system so that Ohioans—and citizens across our country—who have legitimate grievances can efficiently and effectively navigate the judicial system, just as when I sponsored The Energy Employees Occupational Illness Compensation Program Act to compensate the victims of the Cold War who became sick, in some cases died, from exposure to radiation while they worked at nuclear weapons sites and were denied compensation.

In conclusion, I would like to thank the American Tort Reform Association for all of their assistance in preparing this report. I hope that reports such as this, which document clearly how lawsuit abuse affects all Ohioans, will provide the information necessary to reform the system and end abuse. The need for action is now. Today, Ohio is losing doctors, losing businesses, and losing jobs.

Preface

This report documents the costs—both in quantitative terms and in human terms—of Ohio's civil justice system. Early in our research it became apparent that pretext was context; we could not adequately describe the current climate of Ohio's civil justice system without discussing the tumultuous relationship that exists between the Ohio Legislature and the Ohio Supreme Court. With at least 17 decisions in the last two decades striking down liability reform laws, the Supreme Court of Ohio has consistently taken a "line in the sand" approach to civil justice reform; it has effectively foreclosed the Legislative and Executive branches of Ohio government from formulating any meaningful rules pertaining to tort and liability.

As a consequence of the legislature's present inability to act effectively in this area, Ohio's litigation climate has deteriorated substantially, particularly in the areas of asbestos litigation and medical liability. Here we have tried to document the toll that such deterioration has taken on the quality of life for all Ohioans.

Our research has led us to three possible solutions: further state legislative reform, efforts to enact strong civil justice reforms at the federal level, and "court reform" efforts to elect justices who will join with their colleagues in respecting the legislature's role to craft tort and liability reforms. We briefly touch on the need for, and the merits of, each of these proposals.

Michael Hotra

Emily Asel

August, 2002

The Crisis in Ohio's Civil Justice System

In early 2002, the actuarial firm of Tillinghast-Towers-Perrin released its tort cost trends data for the United States. The United States continues to have the most expensive tort system among the industrialized nations studied.[1] The overall cost of the U.S. tort system in 2000 was estimated at $179 billion—up from $159.3 billion in 1995.

In very general terms, if we apply the tort costs from the Tillinghast[2] study to Ohio's population we can estimate that:

- The U.S. tort system cost Ohioans $7.2 billion in 2000;
- The U.S. tort system costs every Ohioan $636 per annum—$2544 for a family of four; and
- Assuming an Ohio median household income of $36,029,[3] the tort system costs Ohioans approximately 7 percent of total family income.

Two components of the civil justice system have had a disproportionately negative impact on Ohio—a burgeoning crisis in the cost of medical liability insurance, which impacts both the cost and accessibility of health care, and an asbestos litigation crisis, that has deprived both plaintiffs and defendants of real justice, and has resulted in the bankruptcy or depressed value of several once-strong Ohio companies

A Medical Liability "Red Alert"

Today, Ohio obstetricians are at a crossroads—they can stop delivering babies or pick up their practices and move to other states. The American Medical Association (AMA) has identified Ohio as one of 12 states facing a "medical liability crisis."

Liability costs have driven up the cost of medical liability insurance sky-high. Many Ohio physicians—particularly those practicing in higher risk specialties, such as obstetrics, neurosurgery, or plastic surgery, have seen their liability insurance premiums increase by more than 100 percent in the last year alone.

- An Ohio plastic surgeon and his partner were forced to take a substantial pay cut to cover the cost of liability insurance that jumped from $40,000 to $90,000 in one year. They were also forced to lay off one office nurse.
- Dr. Brian Bachelder of Mt. Gildead Ohio will see his obstetrics premium increase from $14,000 to $35,000. As a result, he plans to discontinue obstetrics on January 1, 2003, forcing his patients to drive long distances, or forgo prenatal care.
- The last obstetrician practicing in rural Morrow County Ohio saw his liability insurance increase from $22,000 to $46,000 in 2001. The physician is considering leaving Morrow County, which would leave the county with no obstetrics care.

Sadly, sharply-escalating liability costs disproportionately affect those who are least able to afford them; physicians who treat Medicare and Medicaid patients in rural areas are less able to recover the costs of their liability insurance in the form of higher fees.

The tort system is tremendously inefficient as a compensation mechanism. Nationally, about one dollar in five is awarded to the plaintiff to cover direct economic losses such as medical bills and rehabilitative therapy. More than 50 percent of medical liability costs are consumed by transaction costs—attorneys fees, administration, and expenses.[4]

California, by contrast, has had a positive experience with medical liability reform since former Governor Jerry Brown signed the Medical Injury Compensation Recovery Act (MICRA) into law in 1975. MICRA includes a $250,000 limit on noneconomic damages, caps on attorneys fees, and other reforms. Between 1975 and 1999:

- California's medical liability insurance rates increased by 168 percent. Nationally, average rates (excluding California) increased 420 percent;
- California claims settled, on average, in 2 years. In states without noneconomic damage limits, like Ohio, claims take 2.6 years to settle; and
- California, claims settled for, on average, $15,387—53 percent less than the national average.[5]

When one compares the average cost of medical liability insurance in California with that in Ohio, one can see not just how successful MICRA has been at keeping liability rates affordable, but also how successful it has been at controlling sharp spikes in medical liability costs. The data in parentheses is the most recent average rate increase associated with each medical specialty:

Practice:	Internal Medicine	General Surgery	OB/GYN
Ohio:	$10,003 (25.08%)	$37,651 (27.98%)	$58,431 (26.62%)
California:	$8,973 (3.61%)	$27,641 (4.33%)	$45,739 (3.32%)

Asbestos Litigation

In early 2000, the *New York Times* reported on a confidential settlement for thousands of asbestos claims from around the country that were aggregated for trial purposes in a rural courthouse in Jefferson County, Mississippi. The terms of the settlement were highly unusual. In-state Mississippi plaintiffs received $263,000 each, while out-of-state plaintiffs from Texas, Pennsylvania, Ohio, and other states received only $14,000 each—just over five percent as much—for virtually identical claims.[6]

Unfortunately, the adjudication of asbestos claims from across the United States in rural counties and "backwoods" jurisdictions in Mississippi, Texas, and Louisiana is by no means uncommon. Well known Mississippi personal injury lawyer Richard "Dickie" Scruggs calls them "magic jurisdictions"—jurisdictions in which impartial justice is unavailable for out-of-state plaintiffs and defendants. It's simply not fair that Mississippi courts can adjudicate the claims of Ohio plaintiffs for what amounts to "pennies on the dollar."

In many of these jurisdictions, fair rules of causation, expert evidence, and claims aggregation are practically nonexistent. As a result, approximately 80 percent of the asbestos plaintiffs whose claims are adjudicated in these "magic jurisdictions" are unimpaired—they may have been exposed to asbestos—but they are not yet, and are not likely to become ill.

Moreover, today's asbestos defendants are very different than the first wave of asbestos defendants in the 1960's and 1970's. No longer are asbestos defendants the asbestos miners and manufacturers of a generation ago—companies that knew asbestos was dangerous and deliberately concealed that fact from their employees and shareholders.

Instead, today's asbestos defendants are more likely to be companies that used asbestos only peripherally, if at all. In some cases, today's asbestos liability is simply the result of a corporate acquisition. Unfortunately, with the bankruptcy of virtually all of the principal asbestos producers—the bad actors—the legal theory of joint and several liability has shifted asbestos liability—no matter how attenuated—to corporations that remain solvent.

As a result, Ohio companies including Owens Corning, Babcock & Wilcox, Owens-Illinois, and Federal Mogul,[7] have been deluged with nearly one million asbestos claims. The sheer volume of claims, and the inability to get many of those claims removed from "magic jurisdictions" initially put a premium on settlement and streamlined claims resolution processes. Defendants preferred the certainty of settlement—even at a premium—over a "roll of the dice" before a "magic jury."[8]

Unfortunately, in asbestos litigation, "lowering the settlement bar" and streamlining claims resolution had the net effect of bringing still more attenuated asbestos claims into the system.[9] Owens Corning, Federal Mogul, and Babcock & Wilcox have had no choice but to file for bankruptcy as a means of reorganizing asbestos liability. Together, these companies provide more than 65,000 jobs in Ohio, and around the world.

In addition to placing approximately 65,000 jobs at risk, bankruptcy protection substantially restricts corporate access to capital markets, placing bankrupt companies at a substantial competitive disadvantage.[10]

Pensioners and shareholders who held or continue to hold the assets of asbestos defendants are a third class of asbestos litigation victims. Fourteen percent of Owens Corning stock was held by its employees and retirees. That stock has declined 97 percent since the company declared bankruptcy and struggles with Chapter 11 reorganization.[11]

The Effect On Small Business

The effects of litigation on small businesses are profound. More than half of Ohio's small businesses surveyed believe they would go out of business if a lawsuit cost their company more than $250,000 in legal fees and costs. More than half have also raised the cost of products and services due to fear of litigation—costs passed on to Ohio consumers in the form of higher prices.

Moreover, in 1999 and 2000, Ohio insured liability costs increased sharply after remaining flat for the previous five years. This sharp "up-tick" in liability costs, in turn, disproportionately affects small businesses, which do not have the assets to self-insure.

Ohio Insured Liability Costs: 1994–2000

Year	Insured Costs
1994	$4,475.000,000
1995	4,703,000,000
1996	4,879,000,000
1997	4,570,000,000
1998	4,476,000,000
1999	5,231,000,000
2000	6,237,000,000

Note: Does not include self-insured costs.
Source: A.M .Best

Reform Attempts

In 1996, following two years of study and two days of legislative hearings, the Ohio legislature passed, and then-Governor George Voinovich signed, H.B. 350, a comprehensive civil justice reform bill that:

- Limited punitive damages to $100,000 or $250,000, or a multiplier of compensatory damages, depending on the size of a defendant's business;
- Limited noneconomic damages, with exceptions, to $250,000 in most civil actions;
- Abolished joint and several liability for defendants less than 50 percent at fault;
- Allowed for the introduction into evidence of collateral sources of plaintiffs' recovery; and
- Allowed juries to consider fault of non-parties when apportioning liability.

However, before the public policy benefits of the H.B 350 could be fully appreciated, its constitutionality was challenged by the Ohio Academy of Trial Lawyers (The Academy).

The Academy's challenge was consistent with an over-arching and successful strategy promulgated by the Association of Trial Lawyers of America (ATLA) to challenge state civil justice reform legislation in state courts.

ATLA has invested substantial resources and established a stand-alone law firm to formulate and refine state constitutional arguments that can be used to "nullify" civil justice reform. The effort has largely been successful. On more than 90 occasions, state civil justice reform legislation has been struck down as unconstitutional. Since 1986, seventeen civil justice reform laws have been nullified, sometimes under obscure clauses found in the Ohio Constitution. (Appendix A)

By basing its constitutional challenges on clauses found exclusively in state constitutions, ATLA and the Academy avoided raising any "federal issue" that would allow the case to be appealed to federal court. As a practical matter, appeal of a state Supreme Court decision to the Supreme Court of the United States is improbable. The decision remains "locked" at the state level.[12]

Surprising some, the Academy succeeded in taking its case directly to the Supreme Court of Ohio. Unlike other states such as Illinois, where the state trial lawyer association formulated its legal challenge to Illinois tort reform law around the claim of an injured worker, the Academy argued that it had standing to challenge the case directly. It argued that as a membership association of personal injury lawyers, it stood to lose members, and money, if civil justice reform remained "on the books."

No doubt the Academy's strategy was driven, in part, by two Ohio Supreme Court elections looming in 2000. If the Academy's challenge had taken the usual, time-consuming route through Ohio's trial and intermediate appellate courts, the composition of the Supreme Court of Ohio, thought favorable to the Academy by a 4-3 margin, might well have changed to a "3-4" Court on which the majority might not favor the Academy's arguments.

The Supreme Court accepted the Academy's argument and took the case. Then, in August 1999, by the predicted 4-3 margin, the Court struck down H.B. 350 as unconstitutional. The opinion was notable for shrill tenor, which drew the rebuke of some Ohio editorial pages, and for some of the rather quantum leaps of legal reasoning it contained.[13]

The majority found that H.B. 350 which contained a series of civil justice reforms supported by both the medical community and the manufacturing community, violated the "single subject" clause of the Ohio constitution. That clause requires legislation to pertain to a single subject and is meant to prevent legislative "logrolling," a practice whereby non-germane amendments are added to popular bills.

Curiously the majority decided to strike down the entire law as unconstitutional because, it reasoned, it could not ably discern how to sever those clauses found to be unconstitutional from those clauses found to pass constitutional muster. One Justice's dissent, however, demonstrated that it was not only possible, but relatively simple to sever the unconstitutional provisions of the legislation from other provisions.

Thus, according to the majority, H.B. 350, was a law simultaneously found to be in violation of the single subject rule, and yet was somehow, still, indivisible from itself.[14]

When the majority rendered its decision striking down H.B. 350, the four justices who represented the majority drew strong criticism for the number and amount of contributions each had received from the Ohio personal injury lawyers.

According to one estimate, provided by the Ohio Chamber of Commerce, the four justices in the majority voted with the Ohio Academy of Trial Lawyers between 78 and 88 percent of the time. These four justices also received the most campaign contributions from the Academy. By contrast, the three justices who voted in the minority between 28 and 42 percent of the time received the least amount of contributions from personal injury lawyers. (Appendix B)

At the time, the Ohio plaintiffs' bar was flush with cash. Three Ohio lawyers that represented the state in its $10.1 billion settlement with the tobacco industry shared $265 million in legal fees with five out-of-state attorneys.

According to calculations made by Ohio Citizens Against Lawsuit Abuse, if each of the eight attorneys involved in the case worked 24 hours per day, seven days a week for the 572 days that Ohio was a party to the litigation, they would each have averaged fees of $19,303 per hour.[15]

Today, these enormous fees are being used to bankroll novel "regulation through litigation" lawsuits against the firearms industry and the one-time makers of lead based paint. Some have speculated that the fast food industry and pharmaceutical makers may be future targets of government "recoupment" litigation.

Solutions for Ohio

While no single law will solve Ohio's civil justice crisis, several legislative and judicially administered solutions may mitigate the deleterious civil justice climate created by Ohio's current system.

Federal Medical Liability Reform

Congress is currently considering H.R. 4600, the Help Efficient, Accessible, Low Cost, Timely Health Care (HEALTH) Act of 2002.[16] Its companion legislation (S. 2793) was introduced in the Senate by John Ensign (R-NV). The HEALTH Act is based in part on California's MICRA law, which successfully controlled health care costs and provided access to affordable care in the Golden State without compromising patient safety.

H.R. 4600 and S. 2793 would preserve existing state laws that provide stronger liability protections than those contained in the federal bill. Given the distaste of the majority of the current Ohio Supreme Court for virtually any state tort reform law to reach its bench, states like Ohio would benefit from federal legislation that protects both patients and the right to accessible, affordable health care.

The United States House of Representatives has passed legislation similar to the HEALTH Act in earlier sessions of Congress. The sponsors of the HEALTH Act are confident that the legislation will pass the House in 2002. However, these bills have been unable to garner the 60 votes necessary to obtain cloture and secure passage in the United States Senate.

Asbestos Liability Reform

Unlike other liability problems for which a series of discrete legislative proposals, or "magic bullet" federal law might be deemed an appropriate solutions, a number of approaches, involving both courts and legislatures at the state and federal levels, will be needed to rationally resolve the "elephantine mass of asbestos litigation"[17] on state and federal dockets now and in the future.

National Class Action Reform

Legislation (H.R. 2341) recently passed by the United States House of Representatives would help ensure that national class actions and mass actions could be removed from state courts to federal courts, where stronger procedural protections often apply. H.R. 2341 contains strong language to protect consumers from class action lawsuits that: 1) result in a net loss to the consumer; and 2) allow for geographic discrimination whereby in-state or local plaintiffs receive higher awards than out-of-state plaintiffs.[18] The Judiciary Committee of the United States Senate held a hearing on the Senate version of H.R. 2341 (S. 1712) on July 31, 2002.

Rigorous Case Management

Trial court judges need to carefully scrutinize the impairment claims of each asbestos plaintiff. Recent decisions from the Supreme Court of the United States permit federal judges to act as "gatekeepers" and bar "expert" testimony that does not meet rigorous scientific or technical standards applicable to the case before the court. Some state courts have adopted the federal judiciary's gatekeeper standards for certifying expert witnesses. Others have not.[19]

Appeal Bond Reform

In some jurisdictions the bond necessary to post an appeal of a large asbestos verdict can bankrupt a small company. Pennsylvania's ACandS Inc., a small insulation contractor, is uncertain whether it will be able to post bond to appeal $83.75 million in asbestos liability levied by Mississippi courts. Fortunately, Ohio enacted appeal bond reform in January, 2002, which caps appeal bonds at $50 million.

Punitive Damages Reform

Punitive damages have no real role in contemporary asbestos litigation. Punitive damages are designed to punish past conduct and to deter future wrongful conduct. Both concepts serve no useful purpose in today's asbestos litigation environment, where scarce financial resources are more appropriately directed to the truly injured. Moreover, the crushing number of asbestos claims, massive litigation costs, loss of market capitalization among defendants, and attendant bankruptcies have already served a quasi-punitive role.[20]

Pleural Registries

Several jurisdictions have experimented with inactive docket programs (called pleural—meaning lung—registries) that place the claims of unimpaired plaintiffs in "suspended animation" until that plaintiff becomes ill with an asbestos-related disease. In the jurisdictions in which pleural registries have been used—notably courts in Massachusetts and Baltimore—they have been successful. Plaintiffs' lawyers, however, often circumvent these well-managed dockets and instead file their claims in trial court jurisdictions more favorable to specious claims. A national inactive docket program could prevent such "predatory federalism."[21]

A Balanced Ohio Supreme Court That Respects the Right of the Ohio Legislature to Enact Meaningful Liability Reform Legislation

During the last two election cycles (1998 & 2000), elections to the Supreme Court of Ohio have drawn national attention. Candidates on both "sides" of the tort reform issue have had their own re-election campaigns supplemented by third party issue advocacy and independent expenditure campaigns.[22] The tenor and content of the advertising undertaken in some of these campaigned has drawn criticism from both the right and left of the political spectrum.

However, both tort reform groups and personal injury lawyers have recognized that if the Supreme Court of Ohio has decreed itself to be the exclusive body through which revisions to the tort law of Ohio may be made, then candidates seeking to hold or retain a seat on that Court will necessarily be treated less like judges, and more like political candidates.

■ ■ ■ Conclusion

By courting mutual respect and working together, Ohio's three branches of government can solve Ohio's impending civil justice crisis. Federal legislation can help, by ensuring that Ohioans have access to affordable health care, and by ensuring that national mass actions and class actions are adjudicated in federal courts.

Endnotes

1 U.S. Tort Costs: 2000: Trends and Findings on the Cost of the U.S. Tort System (Tillinghast-Towers-Perrin 2002). [hereinafter Tillinghast-Towers-Perrin]. Data includes industrialized nations from Australia, Belgium, Canada, Denmark, France, Germany, Italy, Japan, Spain, Switzerland, and the United Kingdom.

2 In all likelihood, the Tillinghast-Towers-Perrin study underestimates the cost of Ohio's civil justice system. The study does not include the cost of the $260 billion settlement entered into by the states and the tobacco industry in 1998, nor does it include the cost of asbestos litigation—estimated at $200 billion through the year 2040.

3 U.S. Census Bureau, State and County Quickfacts, Ohio, *available at* http://quickfacts.census.gov/qfd/states/39000.html (last visited July 1, 2002). The data is for 1997, which is the most recent year for which data is available.

4 Tillinghast-Towers-Perrin at 12, *supra* note 1.

5 The California Story: Micra: A Successful Model for Affordable and Accessible Health Care (Californians Allied for Patient Protection 2002).

6 Stephen Labanton, *Top Asbestos Makers Agree to Settle 2 Large Lawsuits*, N. Y. Times, Jan. 23, 2000. [hereinafter Labanton].

7 Federal Mogul is headquartered in Detroit, and has facilities in Cambridge, Dayton, Solon, Toledo, Uniontown, and Van Wert Ohio. Federal Mogul, *available at* http://www.federalmogul.com/about_us/index.html (last visited July 1, 2002).

8 In one recent case, a Holmes County Mississippi jury awarded $125 million to six plaintiffs who had been exposed to asbestos fibers, but who showed no signs of illness.

9 Victor E. Schwartz & Leah Lorber, *A Letter to the Nation's Trial Judges: How the Focus on Efficiency is Hurting You and Innocent Victims in Asbestos Liability Cases*, Am. J. Trial Advoc., 247, 248-249 (2000).

10 Ryan Cornell, *Debtors Seek Relief in Droves*, Crain's Clev. Bus., Mar. 4, 2002. Aside from asbestos litigation, many of Ohio's industrial regions are facing an economic downturn. In 2001 there were 1,218 bankruptcies filed in courts in the Northern District of Cleveland, Akron, Youngstown, Canton, and Toledo—cities that represent the industrial backbone of Ohio. While the majority of these bankruptcies can be attributed to a downturn in the economy, or other factors, some may have been a secondary effect of specious asbestos litigation.

11 Roger Parloff, *The $200 Billion Miscarriage Of Justice ; Asbestos lawyers are pitting plaintiffs who aren't sick against companies that never made the stuff—and extracting billions for themselves*, Fortune, Mar. 4, 2002, at 154.

12 Victor E. Schwartz, Mark A. Behrens & Mark D. Taylor, Who Should Make America's Tort Law: Courts or Legislature?, (Washington Legal Foundation 1997).

13 Victor E. Schwartz & Leah Lorber, *Judicial Nullification of Civil Justice Reform Violates the Fundamental Federal Constitutional Principle of Separation of Powers: How to Restore the Right Balance*, 32 Rutgers L. J. 907, 922 (2001). [hereinafter Schwartz & Lorber].

14 Recently, the Harvard law review criticized the Court for its decision noting, "Not only did *Sheward* drive a deeper wedge between the Ohio judiciary and its legislature, but, in its efforts to preserve its common law power to formulate tort law, the *Sheward* majority may have undermined the Ohio Supreme Court's position as defender of the state's constitution.

15 James Bradshaw, *Lawyers for State Cash in National Tobacco Settlement*, COLUMBUS DISPATCH, May 5, 2000, at 12A.

16 H.R. Res. 4600, 107th Cong. (2002).

17 *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821 (1999).

18 H.R. Res 2341, 107th Cong. (2002).

19 Schwartz & Lorber at 270-271, *supra* note 13.

20 Mark A. Behrens & Barry M. Parsons, *Responsible Public Policy Demands an End to the Hemorrhaging Effect of Punitive Damages in Asbestos Cases*, 6 TEX. REV. L. & POL. 137, 137-158 (2001).

21 Labanton at 22, *supra* note 6; Schwartz & Lorber at 255-256, *supra* note 13. In rural Jefferson County Mississippi, Justice Lamar Pickard, consolidated more than 1700 asbestos cases, and planned to base total damages on the outcome of a boutique trial of 12 sample defendants, some of whom had no symptoms of injury. In what one publication described as "Armageddon," the jury returned a verdict of $48.5 million for these 12 defendants, with punitive damages to be decided at a later date. When defense counsel complained about the fairness of the proceeding, the judge claimed he was prepared to try the remaining 1700 cases at once, before the same jury. When defense counsel complained that this sounded like "like this side of hell" the judge replied, "No counselor, that is hell." The case eventually settled, and when the terms of the settlement were later leaked *to The New York Times*, it was revealed that Mississippi residents received nearly 18 times the compensation received by out-of-state residents.

22 Issue advocacy campaigns are third-party campaigns that may discuss issues and a candidate's position on a particular issue, but may not directly advocate the election or defeat of any candidate. Independent expenditure campaigns may directly advocate the election or defeat of a candidate, but may not coordinate activities with the candidate's campaign. As a general rule, issue advocacy campaigns need not disclose their contributor lists. Contributors to independent expenditure campaigns are generally required by law to be disclosed publicly.

■ ■ ■ Appendix A

Civil Justice Reform Legislation Held Unconstitutional by the Supreme Court of Ohio, 1986-2002

Adamsky v. Buckeye Local School District, 653 N.E.2d 212 (Ohio 1995) (two-year statute of limitations for personal injury actions against political subdivisions violated equal protection clauses of State and Federal Constitutions, as applied to minors).

Brady v. Safety-Kleen Corp., 576 N.E.2d 722 (Ohio 1991) (statute governing claims against employers for intentional torts violated workers' compensation provision of State Constitution); Johnson v. BP Chemicals, Inc., 707 N.E.2d 1107 (Ohio 1999) (revised legislation to address Brady decision also violated State Constitution).

Brenneman v. R.M.I. Co., 639 N.E.2d 425 (Ohio 1994) (ten-year statute of repose for improvements to real property violated right to remedy provision of State Constitution) (overruling *Sedar v. Knowlton Construction Co.*, 551 N.E.2d 938 (Ohio 1990)); *Cyrus v. Henes*, 640 N.E.2d 810 (Ohio 1994) (remanded to the trial court on the authority of Brenneman); *Ross v. Tom Rieth, Inc.*, 645 N.E.2d 729 (Ohio 1995) (same).

Burgess v. Eli Lilly and Co., 609 N.E.2d 140 (Ohio 1993) (statute of limitations for DES-related injuries violated right to remedy provision and due process clause of State Constitution).

Crowe v. Owens Corning Fiberglas, 718 N.E.2d 923 (Ohio 1999) (limitation on punitive damages violated jury trial provision of State Constitution).

Gaines v. Preterm-Cleveland, Inc., 514 N.E.2d 709 (Ohio 1987) (health care liability statute of repose violated equal protection clause of State Constitution as applied to adult litigants who, following discovery, did not have adequate time to file actions).

Galayda v. Lake Hospital Systems, Inc., 644 N.E.2d 298 (Ohio 1994) (statute requiring periodic payments of future damages awards in medical malpractice suits violated right to jury trial and due process provisions of State Constitution), *reconsideration denied*, 644 N.E.2d 1389 (Ohio), *cert. denied sub nom. Damian v. Galayda*, 516 U.S. 810 (1995).

Gladon v. Greater Cleveland Regional Transit Authority, 1994 WL 78468 (Ohio App. Mar. 10, 1994) ($250,000 limit on noneconomic damages awards violated right to jury trial and equal protection provisions of State Constitution), *rev'd on other grounds*, 662 N.E.2d 287 (Ohio 1996).

Hardy v. VerMeulen, 512 N.E.2d 626 (Ohio 1987) (statute barring health care liability claims brought more than four years after act or omission constituting alleged malpractice occurred, as applied to bar claims of health care liability plaintiffs who did not know or could not have known of their injuries, violated right to remedy provision of State Constitution), *cert. denied*, 484 U.S. 1066 (1988).

Hiatt v. Southern Health Facilities, Inc., 626 N.E.2d 71 (Ohio 1994) (statute requiring certificates of merit in health care liability actions conflicted with court-promulgated Ohio Rules of Civil Procedure and was invalid and of no force and effect).

Holeton v. Crouse Cartage Co., 748 N.E.2d 1111 (Ohio 2000) (provision of workers' compensation subrogation statute giving the subrogee a current collectible interest in estimated future expenditures violated due process, right to private property, and equal protection sections of State Constitution).

In re Lay, 619 N.E.2d 1196 (Ohio Ct. Cl. 1991) (Crime Victims Compensation Act's statute of limitations violated due course of law and open court provisions of State Constitution as applied to minors).

Mominee v. Scherbarth, 503 N.E.2d 717 (Ohio 1986) (statute which required health care liability actions to be brought within one year from date cause of action accrued, or four years from date alleged malpractice occurred, whichever came first, violated due process provision of State Constitution insofar as the statute applied to minors).

Morris v. Savoy, 576 N.E.2d 765 (Ohio 1991) ($200,000 limit on general damages in health care liability actions violated due process provision of State Constitution, but did not violate equal protection provision of State Constitution).

State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 715 N.E.2d 1062 (Ohio 1999) (comprehensive 1996 tort reform law violated doctrine of separation of powers and one-subject provision of State Constitution).

Rockey v. 84 Lumber Co., 611 N.E.2d 789 (Ohio 1993) (statute prohibiting plaintiffs from specifying amount of monetary damages in complaint when damages sought are in excess of $25,000 conflicted with Ohio Rules of Civil Procedure, which were promulgated by the Ohio Supreme Court pursuant to the State Constitution, and was invalid and of no force and effect).

Schwan v. Riverside Methodist Hospital, 452 N.E.2d 1337 (Ohio 1983) (statute of limitations for health care liability actions, as it applied to minors, violated equal protection provision of State Constitution).

Sorrell v. Thevenir, 633 N.E.2d 504 (Ohio 1994) (statute providing offset of collateral source benefits received by plaintiff violated right to jury trial, due process, equal protection, right to open courts, and right to meaningful recovery provisions of State Constitution); *Samuels v. Coil Bar Corp.*, 579 N.E.2d 558 (Ohio Cm. Pl. 1991) (same as applied to wrongful death actions).

Zoppo v. Homestead Insurance Co., 644 N.E.2d 397 (Ohio 1994) (statute providing for amount of punitive damages to be determined by court violated right to jury trial under State Constitution), *reconsideration denied*, 644 N.E.2d 1389 (Ohio), *cert. denied*, 516 U.S. 809 (1995).

Appendix B

Political Contributions Made by Personal Injury Lawyers to Members of the Supreme Court of Ohio

Justice:	Contributions	Year	Supported OATL Position
Sweeney:	$388,625	1998	88 percent
Resnick:	$261,033	1994	82 percent
Douglas:	$204,408	1996	81 percent
Pfeifer:	$385,550	1998	78 percent
Moyer:	$9,500	1998	42 percent
Stratton:	$13,320	1996	36 percent
Cook:	$25,792	1994	28 percent

Ohio Academy of Trial Lawyers
Source: Ohio Chamber of Commerce, October 10, 2000.